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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/836,045
Filing Date: April 16, 2001
Appellant(s): APPS, WILLIAM P.

Stephanie M. Mansfield
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 15, 2004.

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(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

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(7) Grouping of Claims

Appellant's brief includes a statement that claims 1-39 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

6,073,793	APPS et al.	6-2000
6,047,844	McGRATH	4-2000
5,842,572	APPS et al.	12-1998
5,651,461	APPS et al.	7-1997
5,529,176	APPS et al.	6-1996
5,501,352	APPS	3-1996
5,487,487	HAMMETT	1-1996
4,978,002	APPS et al.	12-1990
4,899,874	APPS et al.	2-1990
3,334,767	CORNELIUS et al.	8-1967

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(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Apps et al. (5,842,572), Apps et al. (5,651,461), Apps et al. (5,529,176), Apps (5,501,352), Hammett (5,487,487), Apps et al. (4,978,002) and Apps et al. (4,899,874). This rejection is set forth in a prior Office Action, mailed on October 2, 2003.

Claims 1-39 are rejected under 35 U.S.C. 102(e) as being anticipated by Apps et al. (6,073,793). This rejection is set forth in a prior Office Action, mailed on October 2, 2003.

Claims 1-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Apps et al. (6,073,793) Apps et al. (5,842,572), Apps et al. (5,651,461), Apps et al. (5,529,176), Apps (5,501,352), Hammett (5,487,487), Apps et al. (4,978,002) or Apps et al. (4,899,874) in view of McGrath (6,047,844) and Cornelius (3,334,767). This rejection is set forth in a prior Office Action, mailed on October 2, 2003.

(11) Response to Argument

102(b) Rejection

Appellant's disclosure shows a double walled divider configuration. Appellant has claimed a plurality of divider walls, each divider wall including two spaced apart generally parallel surfaces. Appellant has not claimed a double wall divider configuration. Appellant apparently believes that the prior art must show a double walled configuration to anticipate the claims. However, this is not the case. The single walled dividers disclosed by the prior art show generally parallel surfaces, one surface corresponding to each opposed side or face of the single

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wall. For example, Apps et al. (5,842,572) discloses a vertical wall 29 as shown in Fig. 1-3 and 7-9 that has two opposing sides or faces which face opposing directions. In addition, vertical wall 29 includes three sections, a first thick section in close proximity to the pylon, a second thinner middle section and a third thick section in close proximity to the central column. Three parallel surfaces are associated with these sections within one of the faces of the vertical wall 29.

Appellant has discussed the limitations of the claims by setting forth three groups: Groups A, B and C. Insofar as the discussion of the groups is similar in that appellant believes that the two parallel divider surfaces are not shown in any of the groups, the three groupings do not need to be separately responded to but can be responded to all at one time. The generally parallel surfaces extend between at least one interior column and the wall structure and extend between first and second interior columns.

Appellant makes reference to a statement made within the 103 rejection that the divider wall does not have a spaced surface construction. This statement is meant to state that the double walled configuration disclosed but not claimed is not shown. Appellant should not misinterpret this statement as an admission of missing structure within a 102 rejection. This statement is made in the event that the structure of the divider is deemed to represent a double wall.

102(e) Rejection

The structure of Apps et al. (6,073,793) is similar to the 102(b) references. The examiner relies on the two opposed facing surfaces of the divider walls to exclusively disclose the claimed “two spaced apart, generally parallel surfaces.”

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103(a) Rejection

This rejection has been made in the event that the structure of the divider is deemed to represent a double wall.

Appellant argues that there is no motivation to combine the references. The motivation found within Cornelius states that the carrier is unusually rugged, reinforced construction comprising an essentially thin walled shell structure. The double walled partitions 11 and 12 are reinforced with webs 15. The reinforced yet thin walled structure is lightweight making it easier to carry and less costly to haul when many carriers are being used. There is further motivation to combine when one considers that the spacing of the double wall structure provides added protection that adjacent bottles will not touch or contact each other and that the double wall structure provides a fail-safe provision should one of the walls be punctured, torn or damaged, the other wall still provides protection to the lower portions of the bottle.

Appellant mentions that McGrath doesn't disclose more than one partition or an interior column structure. McGrath is the teaching or secondary reference, the primary references are relied upon for the more than one partition limitation and the interior column structure. The modification of the dividers to be double-walled doesn't modify the number of partitions or the interior columns. The upwardly extending portions 46 on the divider structure of McGrath suggests interior columns.

Appellant states that the pockets are configured to receive a single bottle rather than a plurality of bottles. The primary references have pockets which receive a single bottle. The modification would not change the size or number of pockets or the fact that one bottle is received in each pocket.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc

June 15, 2004

Conferees

lwy *lwy*

njn *NJN*

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